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15  
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17 *LAURI VALJAKKA*

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

LAURI VALJAKKA,

Plaintiff,

v.

NETFLIX, INC.,

Defendant.

Case No. 4:22-cv-01490-JST

**NOTICE OF MOTION AND MOTION TO  
DISQUALIFY WHITESTONE LAW  
FROM REPRESENTING AIPI, LLC  
BASED ON ACTUAL CONFLICT**

Date: February 15, 2024

Time: 2:00 p.m.

Judge: Hon. Jon S. Tigar

Crtrm: 6 – 2nd Floor

## NOTICE OF MOTION

**TO ALL PARTIES AND TO ALL ATTORNEYS OF RECORD:**

3       **PLEASE TAKE NOTICE** that on February 15, 2024 at 2:00 p.m., or before or as soon  
4 thereafter as counsel may be heard, in the Courtroom of the Honorable Jon S. Tigar, 1301 Clay  
5 Street, Oakland, California 94612, Plaintiff Lauri Valjakka (“Plaintiff” or “Valjakka”) will and  
6 hereby does move the Court for an order granting Valjakka’s Motion to Disqualify Whitestone  
7 Law From Representing AiPi, LLC Based On Actual Conflict. This Motion is based on this  
8 Notice of Motion, the memorandum of points and authorities and declarations in support filed  
9 herewith, any additional pleadings and papers on file in this matter and any arguments that may  
10 be presented at the hearing.

## MEMORANDUM OF POINTS AND AUTHORITIES

## 1. INTRODUCTION

14       Lauri Valjakka (“Valjakka”) files this motion to disqualify Whitestone Law and its  
15 attorneys from representing AiPi LLC (“AiPi”) because Whitestone Law and its attorneys Joseph  
16 Zito, Ken Sheets, Eric Lund and Eric Morehouse previously represented Valjakka and AiPi is  
17 adverse to Valjakka.  
18

## II. ARGUMENT

## A. Lawyers at AiPi and Whitestone Law Represented Valjakka

21 There is no dispute that Whitestone Law and its attorneys represented Valjakka in this  
22 matter. In fact, Sheets and Zito, under the banner of Whitestone Law, represented Valjakka in an  
23 October 12, 2023 deposition.<sup>1</sup> Further, Whitestone Law and its attorneys have been involved in  
24 various aspects of the case since Whitestone was first introduced to Valjakka.<sup>2</sup> The attorneys at  
25 Whitestone Law previously represented Valjakka while at AiPi LLC (referred to as AiPi Inc.) from  
26

<sup>28</sup> ¶<sup>1</sup> Declaration of Lauri Valjakka (“Valjakka Decl.”) at ¶ 7.

<sup>2</sup> Valjakka Decl. at ¶¶2-8, 14.

1 the beginning of the case.<sup>3</sup> In the summer of 2023, Valjakka was introduced to Whitestone Law  
 2 when the attorneys he worked with at AiPi moved to Whitestone Law.<sup>4</sup>

3 **B. Legal Standard for Disqualification**

4 “The authority of a trial court to disqualify an attorney derives from the power inherent in  
 5 every court [t]o control in furtherance of justice, the conduct of its ministerial officers.”<sup>5</sup> A court  
 6 in California applies state law in determining motions to disqualify counsel.<sup>6</sup> “[T]he paramount  
 7 concern must be the preservation of public trust both in the scrupulous administration of justice  
 8 and in the integrity of the bar.”<sup>7</sup> Disqualification must be supported by evidence.<sup>8</sup>

9  
 10 The disqualification of an attorney may be predicated upon the existence of a conflict of  
 11 interest.<sup>9</sup> . Former California Rule of Professional Conduct 3–310(E),<sup>10</sup> states that “[a] member  
 12 shall not, without the informed written consent of the client or former client, accept employment  
 13 adverse to the client or former client where, by reason of the representation of the client or former  
 14 client, the member has obtained confidential information material to the employment.” Cal. Rule  
 15 of Prof'l Conduct 3–310(E). The current Rules of Professional Conduct state that: “A lawyer shall  
 16 not, without informed written consent from each affected client and compliance with paragraph  
 17 (d), represent a client if there is a significant risk the lawyer’s representation of the client will be  
 18 materially limited by the lawyer’s responsibilities to or relationships with another client, a former  
 19 client or a third person, or by the lawyer’s own interests.” Cal. Rule of Prof'l Conduct 1.7(b). As  
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 23 <sup>3</sup> Valjakka Decl. at ¶2.

24 <sup>4</sup> Valjakka Decl. at ¶¶2-8, 12-14.

25 <sup>5</sup> *City & Cnty. of S.F. v. Cobra Solutions, Inc.*, 38 Cal.4th 839, 846, 43 Cal.Rptr.3d 771, 135 P.3d  
 20 (2006).

26 <sup>6</sup> *In re Cnty. of L.A.*, 223 F.3d 990, 995 (9th Cir.2000).

27 <sup>7</sup> *State Farm Mut. Auto. Ins. Co. v. Fed. Ins. Co.*, 72 Cal.App.4th 1422, 1428, 86 Cal.Rptr.2d 20  
 (1999)..

28 <sup>8</sup> *The People ex rel. Dep't of Corps. v. SpeeDee Oil Change Sys., Inc.*, 20 Cal.4th 1135, 1143, 86  
 Cal.Rptr.2d 816, 980 P.2d 371 (1999) (“SpeeDee Oil Change”).

<sup>9</sup> *Beltran v. Avon Products, Inc.*, 867 F.Supp.2d 1068, 1077 (S.D. Cal. 2012), citing *SpeeDee Oil  
 Change*, at 1139.

<sup>10</sup> The provisions of former Rule 3-310 are now found in Rules 1.7 and 1.9.

1 to former clients, Rule 1.9(a) states that absent informed written consent from a former client: a  
 2 “lawyer who has formerly represented a client in a matter shall not thereafter represent another  
 3 person in the same or a substantially related matter in which that person’s interests are materially  
 4 adverse to the interests of the former client.”<sup>11</sup>

5 Also, disqualification of counsel is warranted if either: (1) the attorney in fact has adverse  
 6 confidential information or (2) the attorney’s acquisition of confidential information is presumed  
 7 because the prior and present cases are substantially related.<sup>12</sup> In the first scenario, the former  
 8 client may seek to disqualify a former attorney from representing an adverse party by showing the  
 9 former attorney actually possesses confidential information adverse to the former client. To  
 10 create a conflict requiring disqualification, “the information acquired during the first  
 11 representation [must] be ‘material’ to the second; that is, it must be found to be directly at issue  
 12 in, or have some critical importance to, the second representation.”<sup>13</sup> However, it is well-  
 13 established that proof of actual possession of confidential information is not necessary to  
 14 disqualify the former attorney. Rather, under the second scenario for disqualification, it is enough  
 15 that the attorney is acting adversely to the former client and a “substantial relationship” exists  
 16 between the subjects of the current and former engagements.<sup>14</sup> Where a substantial relationship  
 17 between the successive representations is established, access to confidential information by the  
 18 attorney in the course of the first representation is *presumed* and disqualification of the attorney’s  
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24<sup>11</sup> Rule 1.9(b) prohibits lawyers from being adverse to a client of their former firm if they  
 25 acquired confidential information about the client. This would apply even if the matters have  
 26 nothing to do with each other.

27<sup>12</sup> See *H.F. Ahmanson & Co. v. Salomon Bros., Inc.*, 229 Cal.App.3d 1445, 1452, 280 Cal.Rptr.  
 28 614 (1991); *Faughn v. Perez*, 145 Cal.App.4th 592, 603, 51 Cal.Rptr.3d 692 (2006).

<sup>13</sup> *Farris v. Fireman’s Fund Ins. Co.*, 119 Cal.App.4th 671, 680, 14 Cal.Rptr.3d 618 (2004).

<sup>14</sup> *H.F. Ahmanson & Co.*, 229 Cal.App.3d at 1452 & n. 2, 280 Cal.Rptr. 614; see also *Adams v. Aerojet-Gen. Corp.*, 86 Cal.App.4th 1324, 1332, 104 Cal.Rptr.2d 116 (2001); *Trone v. Smith*, 621 F.2d 994 998 (9th Cir. 1980) (“The relevant test for disqualification is whether the former representation is ‘substantially related’ to the current representation.”)

1 representation of the second client is mandatory.<sup>15</sup> “[T]he disqualification extends vicariously to  
 2 the entire firm.”<sup>16</sup>

3 **C. The Evidence with this Motion Established that Whitestone Law must be  
 4 Disqualified**

5 Valjakka contacted Eric Morehouse in March to April of 2021 about pursuing companies  
 6 he believed were infringing U.S. Pat. No. 8,495,167 (“the ‘167 patent”). Morehouse introduced  
 7 him to his company, AiPi, LLC.<sup>17</sup> Valjakka worked primarily with Morehouse and Lund at AiPi.  
 8 Morehouse and Lund, through AiPi, provided Valjakka technical and legal services. He considered  
 9 both Morehouse and Lund as his lawyers. In providing legal services, Morehouse and Lund helped  
 10 Valjakka identify alleged infringers, including Netflix, draft claim charts and draft complaints  
 11 against the alleged infringers.<sup>18</sup> AiPi has been engaged in all legal decision making from the filing  
 12 of the lawsuit to the present.<sup>19</sup>

13 At some point in the summer of 2023, Morehouse and Lund introduced Valjakka to  
 14 Whitestone Law, a firm Morehouse had co-founded. Whitestone’s lawyers were the same as the  
 15 ones with AiPi, including Morehouse, Lund, Ken Sheets, and others. In fact, the only new lawyer  
 16 at Whitestone that had not been at AiPi was Joseph Zito. Whitestone and its lawyers immediately  
 17 began assisting on all aspects of the case. In fact, Sheets and Zito defended Valjakka in an October  
 18 12, 2023 deposition. Whitestone Law and its attorneys gained confidential information regarding  
 19 the Valjakka case against Netflix through their representation. In particular, Whitestone Law and  
 20 AiPi are both very familiar with the legal services performed for Valjakka by Morehouse, Lund,  
 21 Sheets, and the attorneys with Ramey LLP from the inception of the case.<sup>20</sup>

22 After Valjakka signed a litigation funding agreement with AiPi in 2021, he expected  
 23 litigation payments for case expenses and fees for his attorneys to be paid by AiPi. Valjakka only  
 24 signed the agreement because AiPi said they had adequate funding to take his case through trial  
 25 and any necessary appeals. However, while a few payments were made, AiPi was always behind

26 <sup>15</sup> *Flatt v. Superior Court*, 9 Cal.4th 275, 283, 36 Cal.Rptr.2d 537, 885 P.2d 950 (1994).

27 <sup>16</sup> *Id.*

28 <sup>17</sup> Valjakka Decl. at ¶2.

<sup>18</sup> Valjakka Decl. at ¶3,4

<sup>19</sup> Valjakka Decl. at ¶5.

<sup>20</sup> Valjakka Decl. at ¶¶9-12.

1 on payments and never appeared to have any money. From 2022 to the present Valjakka would  
 2 call Morehouse routinely to request payment and to inform Morehouse that his late payment was  
 3 hurting valjakka's case. Morehouse always said he had the money and would make the payments.<sup>21</sup>

4 AiPi ceased making payments on the Valjakka case at some point in the summer of 2023.  
 5 In the fall of 2023, lawyers at Ramey LLP and Onni Hietalathti informed AiPi on multiple occasions  
 6 that the nonpayment by AiPi was hurting the Valjakka case. In late November, early December of  
 7 2023, AiPi sent a letter stating they would no longer provide resources for Valjakka's case.<sup>22</sup>

8 Valjakka is very concerned that the lawyers at Whitestone Law, previously with AiPi, are  
 9 now representing AiPi. Valjakka intends to pursue a claim for fraudulent inducement against AiPi  
 10 of the AiPi funding agreement, among other causes of action, as AiPi never had the resources to  
 11 fund the Valjakka case.<sup>23</sup>

12 **III. CONCLUSION**

13 Valjakka respectfully requests that the Court disqualify Whitestone Law and its attorneys  
 14 from representing AiPi LLC.

15 Dated: December 12, 2023

16 Respectfully submitted,

17 **Ramey LLP**

18 */s/ William P. Ramey, III*  
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 23 **Attorneys for LAURI VALJAKKA**

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 28 <sup>21</sup> Valjakka Decl. at ¶9.  
<sup>22</sup> Valjakka Decl. at ¶¶10-11.  
<sup>23</sup> Valjakka Decl. at ¶¶10-14.

## **CERTIFICATE OF CONFERENCE**

Pursuant to the Federal Rules of Civil Procedure and local rule, I hereby certify that I conferred via e-mail with counsel for Netflix and Elise Edlin responded that Netflix is unopposed to the motion, but not in agreement with any statement made in the Declaration of Lauri Valjakka that is being filed herewith. I also conferred with Eric Morehouse of both Whitestone Law and AiPi to see if he was opposed. He responded that he did not understand the basis of the motion. Therefore, this motion is filed as opposed.

/s/William P. Ramey, III  
William P. Ramey, III

## CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that all counsel of record who have appeared in this case are being served on this day of December 12, 2023, with a copy of the foregoing via ECF filing.

/s/William P. Ramey, III  
William P. Ramey, III